

84. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq (1981).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "William F. Caton".

William F. Caton  
Acting Secretary

**LIST OF COMMENTERS**

**Comments: 1991**

American Home Satellite Association  
Associated Communications  
Earth Terminal TV Ltd.  
General Instrument Corporation  
Hughes Network Systems  
Michael Couzens  
National Association of Broadcasters  
Satellite Dealers Association of Michigan  
Satellite Dealers' Coalition  
Tandy Corporation  
United States Satellite Broadcasting Co., Inc.  
Video Services Corporation and Atlantic Satellite Communications

**Reply Comments: 1991**

American Satellite Television Alliance  
EDS Video Services  
Hughes Communications Galaxy, Inc.  
Orange County Broadcasting Corporation  
Tandy Corporation

**Comments: July 12, 1993**

Abbott, Robert J. (City of Cape Canaveral)  
American Radio Relay League, Inc.  
American Satellite Television Alliance  
Association for Maximum Service Television  
EDS Corporation  
GE American Communications, Inc.  
GTE Spacenet Corporation  
Home Box Office  
Hughes Network Systems, Inc.  
Melville Corporation  
National League of Cities  
National Association of Broadcasters  
Northwest Municipal Cable Council (on behalf of 7 cities and villages)  
Satellite Broadcasting and Communications Association of America  
Schlumberger Technology Corporation  
Target Stores  
John C. Thomas  
The TJX Companies, Inc.  
Toys "R" Us  
W. James MacNaughton, Esq.  
Walgreens

**Reply Comments: August 16, 1993**

Association for Maximum Service Television  
City of St. Louis  
DirecTv, Inc.  
Home Box Office  
Hughes Network Systems, Inc.  
National Association of Broadcasters  
Satellite Broadcasting and Communications Association of America  
United States Satellite Broadcasting Company, Inc.

Motion to Accept Supplemental Reply Comments and Supplemental Reply Comments --  
Hughes Network Systems, Inc. (August 31, 1993)

**Letters filed in support (various dates):**

Alfred Ricks, Jr.  
Building Officials & Code Administrators International, Inc.  
Camco Cable Service  
Chris TV  
Chrysler Corporation  
Circuit City Stores, Inc.  
City of Livonia (MI)  
City of St. Louis (MO) (additional letter)  
Congressman Billy Tauzin  
County Council of Baltimore County (MD)  
CPI Datanet  
Edward D. Jones & Co.  
FootAction U.S.A.  
ICN/Datalinc, LTD.  
Kohl's Department Stores  
Melville Corporation  
Midwest Star Satellite TV  
Montgomery Ward & Co.  
Pathmark Stores, Inc.  
Piedmont Triad Council of Governments  
Prince George's County Government, Office of Citizen and Consumer Affairs  
Service Merchandise  
ShopKo Stores, Inc.  
Southern California Chapter of NATOA  
Thomson Consumer Electronics  
Toyota Motor Sales, U.S.A., Inc.  
Wincom Systems

**Other Documents:**

United States Court of Appeals for the Second Circuit -- Town of Deerfield, NY v. FCC,  
-- Decision

## Appendix II

For the reasons set forth in the NPRM, the Federal Communications Commission proposes to amend Title 47, Part 25 of the Code of Federal Regulations, as follows:

1. The authority citation for Part 25 continues to read as follows:

**AUTHORITY:** Sections 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 416-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.104 is revised to read as follows:

(a) Any state or local land-use, building, or similar regulation that substantially limits reception by receive-only antennas, or imposes substantial costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable in relation to:

(1) a clearly defined, and expressly stated health, safety, or aesthetic objective; and

(2) the federal interest in fair and effective competition among competing communications service providers.

(b) Any regulation covered by paragraph (a) of this section shall be presumed unreasonable if it affects the installation, maintenance, or use of:

(1) a satellite receive-only antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by local land-use regulation; or

(2) a satellite receive-only antenna that is one meter or less in diameter in any area.

(c) Any presumption arising from paragraph (b) of this section may be rebutted upon a showing that the regulation in question

(1) is necessary to accomplish a clearly defined and expressly stated health or safety objective;

(2) is no more burdensome to satellite users that is necessary to achieve the health or safety objective;

(3) is specifically applicable to antennas of the class mentioned in paragraph (b).

(d) Regulation of satellite transmitting antennas is preempted to the same extent as provided in paragraph (a) of this rule, except that state and local health and safety regulations relating to radio frequency radiation of transmitting antennas are not preempted by this rule.

(e) Any person aggrieved by the application or potential application of a state or local zoning or other regulation in violation of paragraph (a) of this section may, after exhausting all nonfederal administrative remedies, file a petition with the Commission requesting a declaration that the state or local regulation in question is preempted by this section. Nonfederal administrative remedies, which do not include judicial appeals of administrative determinations, shall be deemed exhausted when

(1) the petitioner's application for a permit or other authorization required by the state or local authority has been denied and any administrative appeal has been exhausted;

(2) the petitioner's application for a permit or other authorization required by the state or local authority has been pending with that authority for ninety days;

(3) the petitioner has been informed that a permit or other authorization required by the state or local authority will be conditioned upon the petitioner's expenditure of an amount greater than the aggregate purchase and installation costs of the antenna; or

(4) a state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.

(f) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant that local concerns of a highly specialized or unusual nature create an overwhelming necessity for regulation inconsistent with this section. No application for waiver shall be considered unless it includes the particular regulation for which waiver is sought. Waivers granted according to this rule shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.

## **APPENDIX III**

### **Initial Regulatory Flexibility Analysis**

#### **Reason for Action**

The rulemaking is initiated to obtain comment on the proposed changes to the Commission's zoning preemption rule, 47 CFR §25.104.

#### **Objectives**

The Commission seeks to evaluate whether the proposed changes to the satellite antenna zoning preemption rule will facilitate the installation of antennas and assist in the development of satellite based technologies.

#### **Legal Basis**

The proposed action is authorized under Sections 4(i) and 303 (r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i) and 303 (r).

#### **Reporting, Recordkeeping, and Other Compliance Requirements**

Satellite antenna users who have exhausted local administrative remedies may bring complaints to the Commission regarding overly restrictive zoning ordinances and local governments can petition the Commission for waiver of the rule.

#### **Federal rules that Overlap, Duplicate or Conflict With These Requirements**

None

#### **Description, Potential Impact and Number of Small Entities Involved**

Any policies or regulations adopted in this proceeding could affect small businesses that install or use satellite antennas. In addition, small governmental entities will be affected by any rule changes and may have to reevaluate their satellite antenna zoning policies.

#### **Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives**

This Notice solicits comments on any suggested alternatives.